

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEPHEN M. BILLY	:	CIVIL ACTION NO. 1:11-CV-01577
Plaintiff,	:	
	:	
v.	:	(Judge Conner)
	:	
DANIEL L. PEIPER, et al.,	:	
Defendants	:	

ORDER

AND NOW, this 27th day of July, 2012, upon consideration of defendants Daniel L. Peiper *et al.*'s ("Peiper") Motion to Strike Plaintiff Stephen M. Billy's ("Billy") Second Amended Complaint (Doc. 40) and brief in support (Doc. 41), filed July 2, 2012, and of Peiper's Motion to Dismiss Billy's First Amended Complaint (Doc. 29) and brief in support (Doc. 30), filed June 20, 2012, and the court noting that Billy filed his Second Amended Complaint (Doc. 33) without seeking or obtaining leave of court or consent of opposing counsel, and the court finding that "after [a party has filed] one amendment [to its initial pleading], '[that] party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires,'" Berkshire Fashions, Inc. v. M. V. Hakusan II, 954 F.2d 874, 886 (3d Cir. 1992) (quoting FED. R. Civ. P. 15(a)(2)); see also Rodgers v. Lincoln Towing Service, Inc., 771 F.2d 194, 203 (7th Cir. 1985) (stating that if a party "has already amended his complaint once," that party may not amend its complaint again as of right even if "the [earlier] amendments were 'technical' ones requested by the district court judge"), and it

further appearing that Billy has yet to file a brief in opposition to Peiper's Motion to Dismiss (Doc. 29), it is hereby ORDERED that:

1. Defendants' Motion to Strike is GRANTED and Billy's Second Amended Complaint is stricken from the record without prejudice. Counsel for Billy may move for leave of court or obtain written consent of opposing counsel if they wish to further amend the First Amended Complaint.
2. Billy shall file a brief in opposition to Peiper's Motion to Dismiss by August 8, 2012. Failure to file by this date will result in the court considering the Motion to Dismiss unopposed.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge